

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter Bauer et al.
Application Number: 10/543,118
Filing Date: March 31, 2006
Group Art Unit: 3637
Examiner: Hanh Van Tran
Title: REFRIGERATING APPLIANCE AND DOOR FOR ONE
SUCH APPLIANCE

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF

In response to the Examiner's Answer Brief for the above-identified application issued on August 5, 2010, Applicants submit the following Reply

I. **§112 Rejections**

As noted in Applicants' Appeal Brief, the January 7, 2010 Office Action objected to the Amendment filed on October 5, 2009 under 35 USC §132(a), because the Amendment allegedly added new matter to the application. The Office Action also rejected multiple claims under 35 USC §112, first paragraph, as allegedly failing to

comply with the written description requirement. More specifically, the Office Action objected to Applicants' attempt to identify a recess formed at the upper part of the illustrated refrigerator door with reference numeral 40. The Office Action also objected to Applicants' attempt to amend the specification to recite that the recess 40 shown at the top of the refrigerator door could be used to open and close the door.

The Examiner's Answer Brief admits that the recess is actually shown in the originally filed drawings. The Examiner's Answer also admits that the Antos prior art reference discloses that such a recess, located at the top of a refrigerator door, could be used to open and close the door. The Examiner's Answer further admits that Antos discloses an embodiment which includes a recess at the top of the door, and a separate handle attached to the front of the door. Finally, the Examiner's Answer admits that, as shown in Antos, it is well known in the art to equip a refrigerator door with both a recess at the top of the door, and a separate handle on the front of the door, both of which are used to open and close the door.

Given these facts admitted by the Examiner, it is clear that one of ordinary skill in the art, viewing the originally filed drawings, would immediately recognize that the recess illustrated at the top of the refrigerator door could be used to open and close the door. And given that one of ordinary skill in the art would immediately understand that the recess on the top of the door could be used to open and close the door, it is again respectfully submitted that identifying the recess with a reference numeral, and merely stating what is immediately apparent to one of ordinary skill in the art, does not add any new matter to the application. For all these reasons, withdrawal of the objection to the specification and withdrawal of the rejection under 35 USC §112, first paragraph, are

respectfully requested.

Applicants also note that claim 36 was rejected under 35 USC §112, second paragraph, as allegedly indefinite. Claim 36 recites that the door of the refrigerator appliance includes a grasping aperture that is formed at the top edge of the door, the grasping aperture extending across almost the entire width of the door.

As noted above, the grasping aperture is clearly illustrated in at least Figs. 1, 4, 6 and 9 of the originally filed application. As also noted above, the Examiner has admitted that one of ordinary skill in the art would immediately understand that such a grasping aperture could be used to open and close the door of the refrigerator. Given the clear disclosure of the location and size of the grasping aperture in the originally filed drawings, and in view of the fact that the Examiner agrees that one of ordinary skill in the art would immediately understand what such a grasping aperture is used for, it is respectfully submitted that the rejection of claim 36 under §112, second paragraph, should be withdrawn.

II. The Combination of Bukulmez and Antos

The Applicants' Appeal Brief explained why one of ordinary skill in the art would not have been motivated to modify the Antos refrigerator to include an end cap as illustrated in Bukulmez. Specifically, Applicants explained that doing so would destroy the utility of Antos' end cap.

Rather than responding to Applicants' arguments, the Examiner's Answer Brief merely baldly states that one of ordinary skill in the art would have modified the Antos refrigerator based on the teachings of Bukulmez. However, the Examiner's Answer

Brief provides no reasons why one of ordinary skill in the art would have made this change to Antos' structure. In other words, the Examiner's Answer Brief provides absolutely no motivation for modifying Antos, based on the teachings of Bukulmez, to arrive at a structure as recited in the claims.

In view of the fact that the Examiner has provided no motivation for modifying Antos in view of Bukulmez, and in view of the fact that Applicants have identified a clear reason why one of ordinary skill in the art would not have modified Antos based on the teachings of Bukulmez, it is respectfully submitted that the references are not properly combinable. For this reason alone, withdrawal of all rejections based upon a combination of Bukulmez and Antos is respectfully requested.

III. Claims 15-17, 20-22, 24, 27 and 35 are Allowable Over Bukulmez and Antos

Applicants' Appeal Brief explains that claim 15 recites features which are not shown by even the improper combination of Antos and Bukulmez. Specifically, claim 15 recites that the upper end element includes a plate which extends horizontally between inner and outer walls of the door and across a depth of the door. Applicants' Appeal Brief also explained that the only horizontal portion of the Antos reference which could possibly correspond to the upper end element recited in claim 15 does not extend horizontally between the inner and outer walls across the depth of the door.

The Examiner's Answer Brief takes the position that the language of claim 15 can be read such that the recited upper end element need not extend across the full width of the door between the inner and outer walls. Applicants respectfully submit that this interpretation of claim 15 is improper, particularly in light of the other language in claim

15 which defines what these claim terms mean.

A portion of claim 15 recites “said outer wall and said inner wall interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for the door.” Thus, claim 15 defines the depth of the door as the space between the outer wall and the inner wall. Claim 15 goes on to recite that the upper end element is attached to “an upper transverse edge of the door, the upper end element including a plate extending horizontally between the inner and outer walls and across the depth of the door.”

This portion of claim 15 does not recite that the plate extends across “a part of” the depth of the door. And this portion of claim 15 does not recite that the plate extends “towards the inner and outer walls.” Instead, this portion of claim 15 recites that the plate extends “between the inner and outer walls and across the depth of the door.” Accordingly, Applicants respectfully submit that it is improper to interpret claim 15 to mean that the plate extends across only a portion of the distance between the inner and outer walls.

As noted above, Antos lacks an upper end element as recited in claim 15. For these reasons, withdrawal of the rejection of claims 15-17, 20-22, 24, 27 and 35 is respectfully requested.

IV. Conclusion

In view of the foregoing, and further in view of the arguments provided in Applicants' Appeal Brief, withdrawal of all rejections and allowance of the application are respectfully requested.

Respectfully submitted,

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